

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
FIDELITY BROKERAGE SERVICES LLC,

Plaintiff,

v.

MARSHALL CARO, WALTER RAQUET,
INDII.COM USE LLC, and BILL ROTHFARB,

Defendants.
-----x

BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/22/11

10 Civ. 5893 (BSJ) (RLE)

Memorandum and Order

Plaintiff Fidelity Brokerage Services LLC ("Fidelity") filed an order to show cause as to why an order should not be entered (1) permanently enjoining Defendants Marshall Caro ("Caro") and Indii.com USE LLC ("Indii") from prosecuting any action or proceeding against Fidelity with regard to the Indii account that is the subject of the interpleader action before this Court; (2) enjoining Caro and Indii from prosecuting an arbitration proceeding before the Financial Industry Regulatory Authority ("FINRA") and requiring Caro and Indii to dismiss the FINRA arbitration with prejudice; (3) finding Caro and Indii in contempt of this Court's November 24, 2010 Order; and (4) awarding Fidelity further relief as the Court may deem just. For the reasons provided below, Fidelity's order to show cause is DENIED.

BACKGROUND

On November 24, 2010, the Court denied Caro's and Indii's motion to dismiss Fidelity's interpleader complaint. (Dkt. 39.) The Court granted Fidelity's request for interpleader relief, but reserved determination on what, if any, attorneys' fees Fidelity should be awarded. (Id.) The Court also vacated its October 22, 2010 Order staying all actions involving the parties. (Id.)

Shortly thereafter, in late November, Caro informed the Court that he satisfied the underlying judgment to Bill Rothfarb ("Rothfarb"), which is what spawned the interpleader action. Fidelity subsequently filed an application for attorneys' fees and costs. (Dkt. 41.) Fidelity seeks \$64,179.59 in attorneys' fees and \$405.01 in costs. (Dkt. 42.)

In January 2011, Caro and Indii filed a complaint against Fidelity before FINRA. (Fidelity's Order to Show Cause Ex. 6.) Caro and Indii argue, among other things, that Fidelity's initial restraints of Caro's and Indii's accounts were unlawful. (Id.) They also argue that Fidelity violated its contractual obligation to arbitrate all disputes and forego all lawsuits. (Id.)

FINDINGS

Fidelity deposited approximately \$769,000.00 into the Registry of the Court. Upon review of the parties' submissions and in view of the fact that Caro satisfied the amount of the underlying judgment to Rothfarb, the order restraining the Indii account is VACATED. The Clerk of the Court is directed to release, to Indii's possession, all of the funds Fidelity deposited into the Court's Registry.

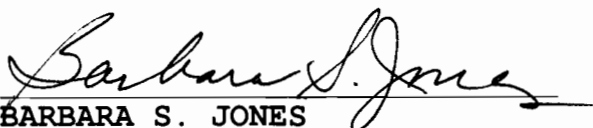
In regard to Fidelity's Order to Show Cause, although the Court granted Fidelity's request for interpleader relief, it never considered whether Fidelity acted properly, in the first instance, by freezing Indii's account or by not submitting the parties' dispute to arbitration. Accordingly, there is no basis for enjoining Caro and Indii from prosecuting the FINRA action or for finding Caro and Indii in contempt of this Court's November 24, 2010 Order.

To the extent Fidelity seeks attorneys' fees and costs for prosecuting the interpleader action, that application remains under consideration by the Court.

CONCLUSION

For the reasons provided above, Fidelity's Order to Show Cause is DENIED. The Clerk of the Court is directed to release, to Indii's possession, all of the funds Fidelity deposited into the Registry of the Court.

SO ORDERED:


BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
April 22, 2011